

Applicants have elected, with traverse, Group I: Claims 1-58, drawn to method of manufacturing a toner for examination.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (35 U.S.C. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups I and III and Groups II and IV as product and process of use. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process of using as claimed can be practiced with another materially different product or (B) that the product as claimed can be used in a materially different process (M.P.E.P. § 806.05(h)).

However, the Examiner has not provided a sufficient example or reason to support the “materially different” criteria required under § 806.05(h)). Therefore, the Examiner’s reasoning is nearly a restatement of the Examiner’s conclusion that the groups are patentably distinct. As the Examiner has provided insufficient reasons in support of this belief, the Examiner has not met the required burden, and accordingly, the restriction is believed to be improper and should be withdrawn.

The Examiner has also concluded that the groups are patentably distinct because they have acquired separate status in the art because of their recognized divergent subject matter.

However, the Examiner has not provided a sufficient example or reason to support any conclusion of patentable distinctness. Therefore, the Examiner’s reasoning is nearly a restatement of the Examiner’s conclusion that the groups are patentably distinct. As the

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Reply to Restriction Requirement of February 24, 2005

Examiner has provided insufficient reasons in support of this belief, the Examiner has not met the required burden, and accordingly, the restriction is believed to be improper and should be withdrawn.

Applicants submit this application is now in condition for examination on the merits and early notification of such action is earnestly solicited.

Respectfully submitted,

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